

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)	
DTE ELECTRIC COMPANY)	
for authority to implement a power supply)	Case No. U-18143
cost recovery plan in its rate schedules for)	
2017 metered jurisdictional sales of electricity.)	
_____)	

At the December 20, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On September 30, 2016, DTE Electric Company (DTE Electric) filed an application, with supporting testimony and exhibits, pursuant to 1982 PA 304 (Act 304), MCL 460.6j *et seq.*, seeking authority to implement a power supply cost recovery (PSCR) plan in its rate schedules for 2017 metered jurisdictional sales of electricity and requesting review of its five-year forecast. DTE Electric initially sought a 2017 levelized monthly PSCR billing factor of 2.14 mills per kilowatt-hour (kWh) based on a projected 2016 PSCR underrecovery of \$39.3 million.¹ DTE Electric also requested a determination that its emission-reduction technologies and chemicals

¹ As the ALJ noted, “Based upon its acceptance of this \$25.3 million dollar reduction, DTE now asserts that it is in ‘an over-recovered PSCR position’ whereby it would ‘lower the PSCR factor effective June 1, 2017 in an attempt to eliminate this PSCR over-recovery by December 2017.’ See, Exhibit A-2. Consequently, DTE filed a new rate sheet (C8.1) setting the PSCR factor from June 2017 forward at negative 0.030 cent per kWh.” PFD, p. 15, n. 5.

used to control mercury, nitrogen oxide, and sulfur dioxide emissions are PSCR costs. In addition, DTE Electric requested a determination that its procurement of capacity resources (not associated with any power purchased for periods in excess of six months) to meet its capacity obligation under Midcontinent Independent System Operator, Inc.'s (MISO) resource adequacy construct does not trigger the mandatory Commission approval provided in MCL 460.6j(13)(b), or alternatively, requested Commission approval to procure capacity resources pursuant to MCL 460.6j(13)(b). In addition, DTE Electric sought a determination that fuel consumed in the generation of electricity at plants that have a negative net generation in any given month be reconciled in the PSCR process. DTE Electric also sought Commission approval to recover as PSCR costs the transportation-related expense associated with its execution of both the Precedent Agreement and Rate Agreement with NEXUS Gas Transmission.

A prehearing conference was held on November 21, 2016, before Administrative Law Judge Mark E. Cummins (ALJ). The ALJ granted intervenor status to the Michigan Department of the Attorney General (Attorney General), the Association of Businesses Advocating Tariff Equity (ABATE), the Michigan Environmental Council and Sierra Club (MEC/SC), the Residential Customer Group (RCG), and the Great Lakes Renewable Energy Association (GLREA). The Commission Staff (Staff) also participated in the proceeding.

A motion hearing was held on April 18, 2017, during which the ALJ heard, and subsequently denied, MEC's motion for partial summary disposition regarding the inclusion of the NEXUS Pipeline and any related costs as part of DTE Electric's 2017 PSCR cost recovery.

On May 5, 2017, DTE Electric filed a motion to strike the direct testimony and exhibits presented by MEC/SC's witness George E. Sansoucy, owner of the consulting firm George E. Sansoucy, P.E., LLC, arguing that, pursuant to the Michigan Rules of Evidence (specifically MRE 402 and MRE 403) considerations of the economic viability of the River Rouge Unit 3 coal-fired electric generation plant

(Unit 3) are not relevant to DTE Electric's PSCR costs, and that the probative value of such testimony and exhibits is negligible and substantially outweighed by the danger of unfair prejudice to DTE Electric. On May 11, 2017, MEC/SC filed a response, arguing that the Commission has previously held, in DTE Electric's 2015 rate case, Case No. U-17767, that Net Present Value (NPV) analyses of marginal units like Unit 3 are both relevant and expected in DTE Electric's PSCR proceedings. MEC/SC further argued that the economics of a utility's existing generating units is relevant under Act 304 because the reasonableness and prudence of a utility's PSCR plan depends on the economic viability of marginal units such as Unit 3. Additionally, MEC/SC asserted that Mr. Sansoucy's testimony and exhibits address an issue that DTE Electric raised in its application, alluding to utility testimony that the resources included in the PSCR filing are economic and therefore that the PSCR plan and five-year forecast are reasonable and prudent. MEC/SC further responded that the utility's argument that the testimony provided only negligible probative value is baseless and that DTE Electric does not identify any specific prejudice it would face as a result of admitting the challenged testimony and exhibits into evidence.

An evidentiary hearing was held on May 16 and 17, 2017. At the start of the evidentiary hearing, the ALJ heard oral argument regarding DTE Electric's motion to strike the testimony and exhibits presented by Mr. Sansoucy. The ALJ denied the motion, finding that it would be beneficial for the Commission to review Mr. Sansoucy's testimony and exhibits and noting the Commission's previously-articulated preference for the inclusion of information on actual sorbent costs and refreshed NPV analyses to inform further decisions in PSCR cases.² 3 Tr 64-65. Pre-filed testimony and exhibits were also entered into the record and cross-examination was conducted.

² The admission of Mr. Sansoucy's testimony and exhibits is discussed further in the context of MEC/SC's exception regarding a requested warning pursuant to MCL 460.6j(7) (Section 7 warning) about the likelihood of future recovery of PSCR costs related to Unit 3.

The ALJ issued a Proposal for Decision (PFD) on November 1, 2017. On November 22, 2017, DTE Electric, ABATE, MEC/SC, GLREA, and the Attorney General filed exceptions to the PFD, and on December 6, 2017, DTE Electric and ABATE filed replies to exceptions. The record in this proceeding consists of 695 pages of transcript and 132 exhibits admitted into evidence.

Proposal for Decision

The ALJ addressed challenges to the 2017 PSCR plan and five-year forecast from three parties. GLREA challenged DTE Electric's five-year load forecast because it did not account for commercial/industrial customer-owned renewable generation, specifically regarding photovoltaic (PV) solar projects that those customers might elect to install. The ALJ recommended rejection of this contention. PFD, pp. 13-14. GLREA took exception to this recommendation, which is further addressed below in the sections that follow.

The Attorney General sought a reduction to the proposed PSCR factor on grounds that DTE Electric's costs are inflated. The Attorney General's witness, Sebastian Coppola, an independent business consultant, asserted that DTE Electric's total expected transmission costs for 2017 should be reduced by \$25,269,000, and DTE Electric agreed to the reduction. The proposed reduction was based on a Federal Energy Regulatory Commission (FERC) ordered refund in Docket No. EL 14-12-002. The ALJ recommended that the Commission reduce the utility's initially requested PSCR factor to account for this \$25.3 million reduction in DTE Electric's expected transmission costs for the 2017 PSCR plan year. PFD, p. 15. No party filed an exception on this issue. The Commission adopts the findings and recommendations of the ALJ on this issue.

The Attorney General also recommended that the Commission should issue DTE Electric a Section 7 warning to the effect that the utility's failure to provide additional information in its 2017 PSCR reconciliation case "regarding its decision not to pursue rehearing of a FERC order related to [Phase Angle Regulating (PAR)] transformer costs" would likely lead to a disallowance of those costs.

PFD, pp. 15-16, citing 4 Tr 374. Finding that DTE Electric's proposed transportation and MISO expenses for 2017 (as adjusted) are appropriate, the ALJ recommended rejection of this argument.

PFD, pp. 15-16. The Attorney General took exception to this recommendation, which is discussed in greater detail below.

No party took issue with DTE Electric's projected generation, purchased power, and emissions compliance costs that the company presented as part of its five-year forecast, and the ALJ recommended that the Commission adopt the utility's total cost projection of \$1,377,898,000 in this proceeding. PFD, pp. 16-17. No party filed an exception on this issue. The Commission adopts the ALJ's findings and recommendations on this issue.

MEC/SC challenged DTE Electric's proposed recovery of generation, urea expense, NO_x control, and limestone costs related to River Rouge Unit 3 running through 2020. Specifically, MEC/SC asserted that the Commission should: (1) find that this facility is "likely uneconomic to operate," (2) "caution DTE that in the reconciliation [of this case], the Commission will likely disallow recovery of the portion of plan year costs incurred by River Rouge Unit 3," at least for those "in excess of its market energy and capacity revenues," and (3) issue a Section 7 warning to the effect that "future recovery of such excess costs for the period of 2018 through 2020 are also likely, on the basis of present evidence, to be denied." MEC/SC's initial brief, p. 87. Contrasting this argument with utility testimony from expert witness, John Yurko, Senior Technical Specialist in the Generation Optimization Organization of DTE Electric, that the generation, urea, and limestone costs were supported for all five years and estimating economic sales DTE Electric would likely be making in the MISO market at that same time, the ALJ recommended that the Commission adopt those projected costs. PFD, pp. 17-18. MEC/SC took exception to the ALJ's findings and conclusions on this issue, which are discussed in greater detail below.

Regarding the utility's 2017 fuel supply plan, the Attorney General argued that forecasted revenues from DTE Electric's corporate affiliate, Midwest Energy Resources Company (MERC), should be negative \$3.6 million and that the Commission should issue a Section 7 warning instructing DTE Electric to reduce its operations and maintenance (O&M) expenses with MERC, or conversely to increase its third-party revenues to ensure MERC's operations do not increase costs for the utility's PSCR customers. The ALJ was persuaded by utility testimony that the majority of MERC's operating costs related to DTE Electric's fuel transshipments, fixed costs, and transmission tonnage have remained constant, while variable operating costs for MERC have declined by five percent. Based on his conclusion that DTE Electric has done a good job in reducing costs, the ALJ recommended that the Commission reject the Attorney General's claims and approve the utility's 2017 PSCR fuel supply plan. The Attorney General did not take exception on this issue. The Commission adopts the ALJ's findings and recommendation on this issue.

ABATE noted that, during January of 2017, DTE Electric received an approximate \$34.2 million refund payment from International Transmission Company, d/b/a ITC Transmission (ITC) through MISO that arose from the FERC's ruling in Docket No. EL14-12-002, which ordered a lower rate of return on common equity for ITC and others operating within MISO's geographic territory during the period of November 2013 through February 2015. See, ABATE's initial brief, p. 2. DTE Electric allegedly elected to disburse this refund by initially lowering its PSCR factor from June through December 2017, with the remaining (true-up) amount to be issued to its customers at a later date. *Id.* However, ABATE went on to note that nothing on the bills sent to its customers seems to indicate that DTE Electric is actually making the refund, or indicating why that is or is not happening. *Id.* ABATE further pointed out that DTE Electric is also expected to receive refunds from a similar FERC proceeding (designated as Case No. EL15-45-000) covering the period from February 2015 through May 2016. *Id.* ABATE claims that these refunds have not been, but should be in the future, "flowed

back to customers more promptly, and with better transparency and verification of their accuracy.” *Id.* Specifically, it asserts that the Commission should order DTE Electric to distribute to its customers, in a much timelier fashion, all refunds related to FERC Case No. EL15-45-000, as well as documenting that refund in a more detailed and transparent fashion than was done with regard to the earlier refund. See, ABATE’s initial brief, pp. 3-5. The ALJ agreed with DTE Electric that ABATE failed to show the ITC/MISO refunds to its customers were inappropriate or inadequate and that there is no reason to conclude that the true-up is inadequate and will not make DTE Electric’s customers whole. However, the ALJ further agreed with ABATE that DTE Electric should be required to refund its customers much faster and suggested that a two- to three-month turn around would be reasonable. PFD, p. 21. According to the ALJ, a faster refund would lessen the likelihood that the customer entitled to the refund might depart the system or discontinue service in the interim and thus not receive the refund. *Id.* DTE Electric took exception to the ALJ’s findings and conclusion on this issue, and ABATE filed an exception to clarify its request regarding this issue. This exception is discussed in greater detail below.

DTE Electric next argued that the Commission should allow it to recover the costs of forecasted transportation expenses connected with the NEXUS pipeline agreement from its PSCR customers by passing along those costs in this PSCR plan case and subsequent PSCR proceedings covering periods during which that pipeline provides service to DTE Electric. The ALJ noted that the Commission previously considered and rejected this argument in its January 12, 2017 order in Case No. U-17920. Several parties opposed cost recovery of NEXUS-related costs in the 2017 PSCR process as well as the Commission’s approval of future costs arising from this project as part of DTE Electric’s five-year forecast, asking that the Commission instead issue a Section 7 warning on the issue. Specifically, MEC argued that the Commission lacks the statutory authority to approve an above-market affiliate fuel transportation contract in order to support a new pipeline by DTE Electric’s unregulated affiliate

and that such approval would contravene the Code of Conduct. MEC further argued that the record does not support DTE Electric's argument that the project will result in an estimated \$350 million in savings to the utility's customers and that the argument is not credible. At best, MEC/SC argued that a November 2015 analysis estimates \$350 million in savings and subsequent forecasts and events confirm this estimate is no longer accurate and should be discounted. The Attorney General argued that the Commission should deny DTE Electric's request to approve costs that will be incurred beyond 2017, essentially suggesting the Commission issue a Section 7 warning. The Attorney General further argued the Commission should deny cost recovery for transportation expenses related to the NEXUS pipeline because DTE Electric failed to prove it was entitled to recover those expenses, pointing out that the utility failed to submit its NEXUS precedent agreement as part of its direct or rebuttal cases. He further points out that DTE Electric failed to demonstrate a clear need to enter the agreement regarding NEXUS and failed to show it seriously considered other options regarding the delivery of gas from the Marcellus/Utica region, and that it failed to present updated figures of the base case numbers since the 2015 report was issued. The Staff elected not to take a position on this matter, although it has expressed support for recovery of the pipeline expenses in past cases. Applying the Commission's findings and conclusions in Case No. U-17920 on this issue, the ALJ agreed that the Commission should not be required to reach a determination regarding the recovery of these costs absent a "transparent evidentiary presentation examining the full nature of the NEXUS arrangements, including its full and actual construction costs." PFD, pp. 31-32, citing the Commission's January 12, 2017 order in Case No. U-17920, p. 5. The ALJ further concluded that a thorough assessment regarding cost recovery for expenses incurred during the PSCR plan year or the inclusion of future expenses in the five-year forecast cannot be conducted in an accurate manner because the record shows that construction of the NEXUS Pipeline will not be completed--and may well not even be initiated--during the 2017 PSCR plan year. As a result, the ALJ recommended that the Commission "not include any NEXUS-related costs in the 2017 PSCR Plan year, while also recommending both that no such

costs currently be approved as part of the 5-year forecast and no Section 7 warnings be issued, at least until more certainty and transparency can be provided.” PFD, p. 32. The Commission agrees with the ALJ’s recommendations on this issue and adopts the findings and conclusions of the ALJ with some clarifications. MEC/SC took exception for the sole purpose of clarifying the record regarding the ALJ’s findings of fact in the PFD. The Commission agrees with MEC/SC’s request for clarification as discussed in greater detail below.

In sum, the ALJ recommended: (1) approval of DTE Electric’s electric load forecast for the 2017 PSCR plan year; (2) approval of its proposed electric transportation and MISO expenses; (3) rejection of a requested Section 7 warning regarding DTE Electric’s decision not to seek rehearing of an adverse FERC decision regarding the PAR cost transformer issue; (4) a Commission finding that the company’s projected generation, purchased power, and emissions compliance costs regarding both NO_x and SO₂ are reasonable and prudent; (5) approval of DTE Electric’s projected costs regarding the continued operation of Unit 3 and rejection of MEC’s request for a Section 7 warning regarding such costs for the 2018-2020 period; (6) a Commission finding that the company’s fuel supply plan for 2017 is reasonable and prudent and rejection of the Attorney General’s proposed Section 7 warning concerning MERC-related expenses; (7) adoption of the ALJ’s finding that, although the ITC/MISO refunds arising from FERC Docket No. EL14-12-002 do not appear to have been inadequate or inappropriate, the Commission should grant ABATE’s request ordering DTE Electric to distribute refunded monies arising from FERC Docket No. EL15-45-000 faster and with more transparency; and 8) approval of the ALJ’s recommendation that DTE Electric refrain from including any NEXUS-related costs in either the 2017 PSCR plan year or the five-year forecast, as well as rejection of the parties’ various Section 7 warnings related to this issue. PFD, pp. 32-33.

Exceptions, Replies to Exceptions, and Discussion

Solar Energy

GLREA takes exception to the ALJ's recommendations concerning the inclusion of solar energy in the PSCR plan and forecast. GLREA posits that, based on the testimony of Mr. Geoffrey C. Crandall, the principal and Vice President of MSB Energy Associates, the Commission should require DTE Electric to include the effects of commercial and industrial PV resources in its PSCR plan and forecast for the next five years. GLREA further asserts that the Commission should require DTE Electric to undertake, in this or the next PSCR plan case, analysis that specifically accounts for the effect of costs of customer-owned solar facilities that have been or are likely to be constructed by its residential, commercial, and industrial customers during the PSCR plan year and the five-year forecast. GLREA exceptions, p. 2. GLREA disagrees with the ALJ's ruling that, because few customer-owned PV solar units have been installed by DTE Electric's commercial and industrial customers, no basis exists for estimating how much PV-based generation will be added by these customers in the short term. GLREA contends the ALJ's conclusion is speculative and further argues DTE Electric should have the duty to analyze and present such information in future PSCR plan cases. Because there is no evidentiary basis for the ALJ's findings, GLREA further contends that there is no reason to absolve DTE Electric from including such an analysis in upcoming cases. GLREA's exceptions, pp. 3-4.

GLREA further maintains that the ALJ's recommendations on this issue do not comport with the requirement in the Administrative Procedures Act of 1969, MCL 24.201 *et seq.*, (APA), that the Commission's orders be based on "competent, material, and substantial evidence on the whole record" and that a failure to follow this standard also constitutes a violation of due process.

GLREA's exceptions, pp. 4-5. GLREA explains that the basis for the Commission's decisions in previous cases rejecting this argument is now moot because the new energy laws have been enacted into law. According to GLREA, 2016 PA 341 (Act 341) and 2016 PA 342 clarify that renewable energy resources are to be expanded. GLREA further argues that DTE Electric presented no evidence or rationale to justify a ruling that customer-owned solar facilities should be excluded from its five-year forecast in PSCR plan cases. GLREA's exceptions, pp. 15-16.

In reply, DTE Electric asserts that GLREA's exceptions do not articulate any erroneous citation of any legal authority or the evidentiary record in the PFD regarding this issue. And, DTE Electric asserts that GLREA never addresses in its exceptions how the Commission should determine that DTE Electric failed to properly forecast minimal market growth for customer-owned PV for either the commercial or industrial class when GLREA's exhibits substantiate DTE Electric's forecast. Further, the utility suggests GLREA's reliance on Exhibits GLR-5 and GLR-7 is misplaced because these forecasts only address the alleged market growth of both commercial and industrial customer-owned PV on a national scale. They do not reference the utility's service territory in Southeast Michigan. Thus, DTE Electric urges the Commission to adopt the ALJ's recommendation in the PFD and reject GLREA's exception.

The Commission finds the PFD well-reasoned, and adopts the ALJ's findings and conclusions on these issues. The Commission has, in the past, expressed a reluctance to make significant changes to the requirements for PSCR plans and forecasts in response to GLREA's arguments. See, May 14, 2015 order in Case No. U-17319, pp. 14-15 and January 12, 2017 order in Case No. U-17920, p. 12. Although GLREA is correct that the pending legislation that the Commission cited as the basis for rejecting its claim in the past has been enacted into law, this factor does not, in and of itself, warrant a change of course regarding the Commission's treatment of customer-

owned solar resources by commercial and industrial customers. Rather, Act 341 now provides a different avenue for consideration of renewable energy resources, i.e., the integrated resource plan (IRP) under Section 6t of Act 341, MCL 460.6t. In addition, the Commission finds persuasive DTE Electric's argument that GLREA offers no evidentiary basis for a different five-year forecast than that which the utility proposed. In the absence of evidence warranting a different result, and in light of the new legislative framework provided in the IRP for consideration of renewable energy resources, the Commission adopts the ALJ's recommendation on this issue and rejects GLREA's request.

River Rouge Unit 3 Economics

MEC/SC took exception to the ALJ's ruling rejecting its position regarding the continued operation of Unit 3 and its requested Section 7 warning about the likelihood of recovering costs that exceed market energy and capacity revenues for the period 2018 through 2020. MEC/SC criticized the utility's "refreshed" NPV economic analysis, arguing it wrongfully assumed both River Rouge Unit 2 (Unit 2) and Unit 3 were operating when this was not the case, and pointing out DTE Electric only updated one set of inputs, for pollution control and sorbent costs, leaving the other "outdated" assumptions in place. MEC/SC's exceptions, p. 5. MEC/SC points to evidence suggesting that it is now uneconomic for DTE Electric to continue operating Unit 3. MEC/SC further argues that the ALJ failed to evaluate any of the evidence DTE Electric presented during rebuttal or MEC/SC's challenge to that evidence through discovery and cross-examination.

MEC/SC also references past Commission decisions addressing the economics of continued operation of the St. Clair, Trenton Channel, and River Rouge plants that required a thorough evaluation of the issue, including actual capital costs and a refreshed and updated NPV analysis containing updated assumptions. MEC/SC exceptions, pp. 8-10. MEC/SC next reviews the

evidence concerning Unit 3 presented in this case. MEC/SC notes that Mr. Sansoucy's testimony shows that, had DTE Electric updated some key inputs in its refreshed NPV analysis, it is likely that continued operation of Unit 3 is no longer economic. MEC/SC argues that the failure to update energy and capacity prices, both of which are much lower than in 2014, as well as the assumption that Unit 2 would continue to operate when it was retired, skewed the results of its refreshed NPV analysis. MEC/SC points out that Unit 3 will continue to bear common plant costs that had previously been shared between Units 2 and 3, a situation the Commission recognized as problematic in DTE Electric's last rate case. MEC/SC's exceptions, p. 13. Also, lower forecasted capacity prices than those used in the refreshed NPV analysis will reduce the revenue Unit 3 could earn in the MISO capacity market, and reduce DTE Electric's cost of replacing the capacity from Unit 3. 4 Tr 634-635. Finally, lower forecasted market energy prices result in reduced frequency at which Unit 3 dispatches, reduced revenue generated from selling energy Unit 3 produces, and reduced cost for DTE Electric to replace the energy from Unit 3. MEC/SC exceptions, p. 13, citing testimony of George Sansoucy at 4 Tr 633.

MEC/SC criticizes DTE Electric's analysis because it does not include capital costs or fixed O&M expenses required to continue operating Unit 3, (i.e., capacity-related costs) while at the same time it includes capacity-related revenues on the positive side of the ledger. MEC/SC claims that the utility's projected fixed O&M expenses for Unit 3 are \$18.2 million in 2017. Adding this cost back in to the costs subtracted out eliminates "most" of the utility's estimated net profit for Unit 3 before capital costs are even considered. Further MEC/SC argues that, if Unit 3 incurs approximately the same amount of fixed O&M expenses in 2018 and 2019, that it did in 2017, the claimed profit disappears entirely and is replaced with a substantial loss to customers even before capital costs are accounted for. MEC/SC's exceptions, p. 15. Further, applying the same seven-

month time period to examine both fuel costs and energy market prices, MEC/SC points out that, the drop in coal costs shrinks to 1% compared to a 9% to 12% drop in market energy prices.

MEC/SC argues that the ALJ failed to discuss or evaluate any of the NPV analyses entered into evidence and did not address the capacity and energy price projections that Mr. Sansoucy sponsored. And, the ALJ did not discuss Mr. Yurko's rebuttal study of the economics of continuing to operate Unit 3, nor the flaws in that study that MEC/SC brought out during cross examination. MEC/SC identifies boilerplate language in the PFD that has nothing to do with this issue and further argues that the PFD is unclear because it refers to MEC/SC's request as being "at odds" with prior Commission rulings, but fails to identify or cite these rulings. MEC/SC argues that, because the PFD fails to indicate that it considered the evidence on the economics of operating Unit 3, the Commission cannot adopt the PFD's conclusions as a final decision. Further, MEC/SC indicates that adopting the PFD's conclusory statements would be insufficient under the APA. Thus, MEC/SC requests that the Commission find that the evidence shows Unit 3 is likely uneconomic to operate, caution DTE Electric that in the PSCR reconciliation the Commission will disallow recovery of the portion of plan year costs incurred by Unit 3 in excess of its market energy and capacity revenues, and issue a Section 7 warning that future recovery of such excess costs for the period of 2018 through 2020 are also likely, on the basis of present evidence, to be denied. MEC/SC's exceptions, p. 20.

In reply, DTE Electric argues that MEC/SC's recommendations do not address the issue of whether the power supply costs are reasonable and prudent, and instead are primarily concerned with non-PSCR costs addressed in other Commission proceedings. According to the utility, the ALJ correctly ruled that Mr. Yurko's testimony regarding the reasonableness and prudence of DTE Electric's generation, emission levels, urea expenses, and limestone costs "was mainly

undisputed.” DTE Electric’s replies to exceptions, p. 9, quoting PFD, p. 18. DTE Electric argues that the PFD properly considered evidence regarding PSCR costs instead of evidence regarding non-PSCR costs that the MEC/SC wants the ALJ and the Commission to inappropriately consider in this proceeding. *Id.*, p. 10. The utility explains that PSCR proceedings concern the recovery of an electric utility’s “power supply costs” on an annual basis. Further, DTE Electric contends that, under the plain and ordinary meaning of Act 304, both the PSCR plan and five-year forecast concern only the utility’s projected PSCR costs for its existing sources of power generation and that Act 304’s definition of PSCR costs expressly excludes both capital and O&M costs. The company asserts that the Commission lacks jurisdiction to consider either capital or O&M costs for determining whether DTE Electric’s proposed PSCR costs are reasonable and prudent. *Id.*, p. 12 (citation omitted). Further DTE Electric points out that MEC/SC cites no legal authority that would permit either the ALJ or the Commission to inappropriately consider non-PSCR costs for Unit 3 in this PSCR proceeding. According to the utility, the Commission has determined in a previous case that capital costs must be litigated in a rate case, and that an Act 304 proceeding is not the appropriate forum to determine issues related to the company’s long-term capital investment decisions. *Id.*, p. 13, quoting from the Commission’s December 4, 2014 order in Case No. U-17097. DTE Electric further asserts that NPV analyses are driven by O&M costs that are reviewed in rate cases. *Id.*, p. 14.

The utility further renews its objections to the testimony of Mr. Sansoucy, arguing that the Commission should not rely on or afford evidentiary weight to his testimony or Exhibits MEC-46 through MEC-55 because their discussion regarding non-PSCR costs and net present value revenue requirement (NPVRR) analyses is not relevant to this PSCR proceeding. Even assuming this testimony and these exhibits were somehow determined to be relevant to this proceeding, the

utility argues that they confuse the issue in the proceeding, i.e., whether the utility's forecasted PSCR costs for the 2017 PSCR year are reasonable and prudent, with issues for an IRP proceeding. The company explains that Mr. Sansoucy's testimony states that continued operation of Unit 3 through May 2020 is uneconomical. But, according to DTE Electric, the issue for this proceeding is whether its projected PSCR costs for its existing sources of power generation such as Unit 3 are reasonable and prudent. Accordingly, the utility contends this testimony should be given minimal, if any, evidentiary weight in this proceeding.

DTE Electric further maintains that the testimony of Mr. Yurko calls into question Mr. Sansoucy's assertion that Unit 3 is uneconomic. According to the utility, Mr. Sansoucy failed to include the value of capacity in the unit profitability analysis, and this value and ancillary service value of a unit are credits to the PSCR expense. DTE Electric's replies to exceptions, p. 19. DTE Electric also points out that Mr. Sansoucy did not acknowledge the utility's discovery responses that the "UnitProfitBySubp" report uses "average monthly fuel blends and is not optimized to daily market conditions" *Id.*, quoting Exhibits MEC-52 and MEC-53. According to the company, daily fuel blend optimization "significantly improves unit profitability and the "UnitProfitBySubp" report does not reflect that improved real value." *Id.*, citing 4 Tr 407. Additionally, the utility argues that Mr. Sansoucy failed to acknowledge that MEC/SC was informed in a discovery response that DTE Electric recently discovered an error in the variable O&M used for Unit 3 in the "PROMOD run" for this case. According to the company, this error caused Unit 3 to be significantly undervalued in the "UnitProfitBySubp" report. DTE Electric's replies to exceptions, p. 20, citing 4 Tr 407.

DTE Electric asserts that Mr. Yuko performed an analysis correcting these deficiencies in Mr. Sansoucy's testimony and exhibits. The result of this analysis led the utility to conclude that

Unit 3 is providing future energy market value to its customers instead of a loss. DTE Electric acknowledges that Mr. Yurko's analysis did not include potential reserve shutdowns that could occur based on the company's real-world processes, and that Mr. Yurko did not attempt to value ancillary services and natural gas overfire capability, factors which would have improved Unit 3's value or profitability analysis. *Id.* Mr. Yurko did, however, estimate the total PSCR value of Unit 3 by including capacity value along with the energy value in the MISO market. This led the utility to conclude that Unit 3 provides a significant capacity value in the MISO market. DTE Electric further explains that MEC/SC's criticism that Mr. Yurko's analysis did not include either O&M costs or capital costs is improper as these costs are not PSCR costs. DTE Electric argues that MEC/SC confuses the issue, which is limited to whether projected PSCR costs are reasonable and prudent for the utility's existing generation with issues "pertinent only to a rate case or an IRP proceeding." DTE Electric's replies to exceptions, p. 21. Thus, DTE Electric continues to object on the basis of relevance to the admission of Exhibit MEC-75 reflecting non-PSCR costs. The utility also argues that MEC/SC's mischaracterization of DTE Electric's testimony regarding the decrease in coal prices is premised on Mr. Yurko's analysis covering a two-year time period compared to Mr. Sansoucy's testimony on the same subject that covers only a seven-month time period. And, DTE Electric questions the reliability of Mr. Sansoucy's testimony because it is premised on an erroneous profit report. The utility further claims that MEC/SC fails to acknowledge that Mr. Yurko's rebuttal analysis uses the most recent values in his 2017 PSCR PROMOD run for both coal prices and market prices and the same time frame for both market and coal prices.

The Commission, having considered the parties' arguments, evidentiary record, and the PFD, agrees with and adopts the PFD's recommendation rejecting MEC/SC's proposed Section 7

warning for the following reasons. Although there was conflicting testimony presented in this case regarding the profitability and value of Unit 3, the ALJ correctly observed that Mr. Yurko's testimony regarding the reasonableness and prudence of the projected PSCR costs warrants approval of the PSCR plan. The Commission further finds that it is both appropriate and necessary to consider whether an existing source of generation is uneconomic in a review of a PSCR plan because such an assessment can aid the Commission in determining whether it is reasonable and prudent for a utility to incur projected PSCR costs in the continued operation of that unit. As MEC/SC pointed out, the Commission stated as much in its December 11, 2015 order in Case No. U-17767, pp. 15-16. Nevertheless, the ALJ's correct decision to include for consideration in this case MEC/SC's testimony regarding the profitability and value of Unit 3 is not dispositive of the appropriateness of a Section 7 warning given Mr. Yurko's analysis during rebuttal, which showed that Unit 3 does have value. Although Mr. Yurko's analysis did not include non-PSCR costs such as capital costs and O&M costs, this factor alone does not persuade the Commission that a Section 7 warning is appropriate. Notably, in concluding that the PSCR plan and projected PSCR costs are reasonable and prudent in this case, the Commission is not prohibited from disallowing actual PSCR costs in the PSCR reconciliation proceeding that are unreasonable or that result from imprudent decision making. Because there was conflicting testimony about the profitability and value of Unit 3, the Commission is not persuaded that a Section 7 warning regarding the likelihood of future cost recovery is appropriate at this time. Yet, as noted, this determination has no bearing on the utility's actual PSCR cost recovery in a future reconciliation proceeding. The utility remains responsible for making its case for cost recovery in the PSCR reconciliation proceeding by providing a thorough presentation of the reasonableness and prudence of those costs. Given the record and arguments before the Commission, the

Commission adopts the ALJ's recommendation in the PFD rejecting MEC/SC's request for a caution and Section 7 warning.

Phase Angle Regulators

The Attorney General takes exception to the ALJ's recommendation rejecting his request for a Section 7 warning regarding DTE Electric's decision not to pursue further litigation to address FERC's decision to assign 100% of the cost of PAR transformers to the MISO region. The Attorney General explains that ITC installed PAR transformers to prevent electric current loop flows affecting reliability and energy market prices in three regions regulated by MISO, New York ISO (NYSO), and PJM Interconnection, L.L.C. (PJM). Although FERC initially decided to allocate the cost of the PAR transformers among the three regions, it subsequently reallocated all of the costs to the MISO region. DTE Electric is being held responsible for an approximately \$27 million refund to cover the portion of the PAR transformers costs paid by NYSO and PJM pursuant to a FERC order dated September 22, 2016 in FERC Docket ER 11-1844 (FERC order). Attorney General's exceptions, p. 5. The Attorney General estimates that the annual amount for the 2017 plan year and future years in the forecast will be approximately \$4 million which will slightly decline each year as the capitalized investment is depreciated. 4 Tr 676. He further contends that, over the depreciable life of the PAR transformers, it is likely DTE Electric's customers will pay more than \$50 million. In a discovery response, DTE Electric indicated that it decided not to request a rehearing of the FERC order even though the utility disagreed with the decision. During cross-examination, David Nick, a Regulatory Compliance Consultant in the Federal Regulatory Affairs Department of DTE Energy Corporate Services, LLC's Regulatory Affairs Organization, further admitted that DTE Electric disagreed with the FERC order as both incompatible with cost allocation principles and as imposing an increased cost to its customers.

Attorney General's exceptions, p. 6, citing 4 Tr 377. Because of the large dollar amounts at issue and the significant impact on PSCR recoverable costs, the Attorney General argues that DTE Electric customers deserve a more thorough analysis and transparency regarding the utility's decision not to pursue further litigation including any cost-benefit analysis DTE Electric may have undertaken. He further requests that the Commission direct DTE Electric to be more forthcoming with its reasoning for not pursuing this matter further, and to issue a Section 7 warning cautioning DTE Electric that, without more information being provided in the PSCR reconciliation, it will likely face disallowance of recovery of the allocated costs.

DTE Electric replies that the Attorney General's request for a Section 7 warning should be rejected because he fails to articulate any legal or evidentiary error in the PFD. According to the utility, the record shows that the FERC ruling involved questions of fact and not law. DTE Electric further asserts there is a heightened federal court standard of review for FERC decisions regarding questions of material facts in rate cases. And, according to the company, the evidentiary record does not show that the FERC decision failed to meet the requisite standard to withstand judicial scrutiny. Additionally, DTE Electric points out that no other party to the FERC decision appealed the issue either, including: MISO, the Commission, and ITC. And, no other party filed any brief or exceptions in support of the Attorney General's recommendation for a Section 7 warning on this issue. Thus, DTE Electric urges the Commission to adopt the ALJ's finding and reject the Attorney General's recommended Section 7 warning.

The Commission has reviewed the record as well as the parties' arguments and the PFD and adopts the ALJ's well-reasoned recommendation on this issue. The Commission agrees with DTE Electric that an appealing party bears a heavy burden of showing that the findings of fact in a FERC rate case decision lack any rational basis. The Commission further finds compelling the

fact that no other party appealed the FERC decision regarding the allocation of PAR transformer costs. The Commission also notes that the issuance of a Section 7 warning is a choice that the Commission does not make lightly and that is typically reserved for utility decisions that are, without question, not only costly but unwarranted. The Commission is not persuaded that DTE Electric's decision not to further litigate the FERC order was unsound despite the high dollar amount at stake and the cost to ratepayers that is involved. The Commission therefore adopts the ALJ's recommendation for the reasons expressed here and in the PFD.

Federal Energy Regulatory Commission Refunds

DTE Electric takes exception to the ALJ's recommendation that the Commission adopt ABATE's request that DTE Electric "be ordered to distribute any and all refunded monies arising from FERC Docket No. EL15-45-000 faster and with more transparency. . . ." DTE Electric's exceptions, p. 2, quoting PFD, p. 33. DTE Electric first points out there is no evidence in the record to support this recommendation as ABATE failed to file any testimony, exhibits, or conduct any cross-examination in the proceeding regarding any money to be refunded arising from FERC Docket No. EL15-45-000 (EL15 refund). Rather, the utility points out that ABATE first mentions the EL15 refund in its initial brief. Thus, the utility contends that the ALJ's recommendation lacks any foundation in the evidentiary record and must be rejected as a matter of law pursuant to the APA.

DTE Electric further argues that this claim is not ripe for review because it rests upon contingent future events that may not occur as anticipated or at all. DTE Electric's exceptions, p. 4. According to the utility, at the time that it filed this exception, FERC had yet to issue any final order regarding the EL15 refund. Thus, according to DTE Electric, the doctrine of ripeness bars

the Commission from considering the ALJ's recommendation regarding the EL15 refund in this PSCR proceeding as a matter of law.

Next, DTE Electric asserts that the Commission should reject the ALJ's recommendation because the ALJ's assertion that the EL15 refund can be returned to PSCR customers faster than the refund in FERC Docket No. EL14-12-002 (EL14 refund) is speculative. Specifically, DTE Electric contends it is unknown whether the utility will, in the future, be in "an under-recovered PSCR position (where PSCR customers owe DTE Electric) or an over-recovered PSCR position (where DTE Electric owes PSCR customers) when the FERC finally issues a final order . . ." for the EL15 refund. DTE Electric's exceptions, p. 6. The utility contends that, if it is in an under-recovered position, it is unreasonable to expect that it can facilitate a faster return of the EL15 refund to PSCR customers when such a refund will only lead to a larger under-recovered position at the end of the PSCR year. DTE Electric argues that it is more likely to be in an under-recovered PSCR position than an over-recovered PSCR position. Accordingly, DTE Electric urges the Commission to reject the ALJ's recommendation on this issue.

In reply, ABATE argues that DTE Electric's assertion that the evidentiary record lacks support for the Commission to adopt the ALJ's recommendations regarding the EL15 refund is unpersuasive because ABATE offered record evidence in the form of discovery responses by the company. Specifically, Exhibits AB-7, AB-8, and AB-9 relate to DTE Electric's intended procedures with any EL15 refunds, which the utility asserts will be the same as the EL14 refunds. Further, ABATE contends that, pursuant to Mich Admin Code, R 792.10428, it is appropriate for the Commission to take official notice of the fact that, in Case No. U-18142, Consumers Energy Company refunded millions of dollars of transmission owner refunds back to Michigan ratepayers with better speed. ABATE's replies to exceptions, p. 2. ABATE also asserts that ripeness should

not be used as a shield to allow DTE Electric to hold on to millions of dollars in customer refunds and avoid transparency when releasing those refunds, particularly here, where the fact that a final FERC order will issue and will require refunds does not appear to be disputed. Last, ABATE asserts that DTE Electric's argument that the ALJ's ruling is speculative is unpersuasive when there is evidentiary support for the ruling based on ABATE's Exhibits AB-7, AB-8, and AB-9.

Because the ALJ ruled in ABATE's favor on this issue, ABATE filed an exception on this issue, not to dispute the ALJ's findings or conclusions, but to further articulate its proposal that the ALJ recommended. Specifically, ABATE requests that "the Commission should require [DTE Electric] [to] file, within 60 days of receiving EL15 Refund payments, to reduce its then-current PSCR factor to remove any resulting projected over-recovery through the end of the current PSCR factor period." ABATE's exceptions, p. 2, quoting ABATE's initial brief, pp. 3-4. Further, in order for the refunds to be distributed with greater transparency, ABATE requests that "the Commission require [DTE Electric] to make a filing in this docket within 30 days of receipt of any EL15 Refund payments, and set forth the details regarding the plan for delivering the refunds." *Id.*, quoting ABATE's initial brief, p. 4. ABATE further points out that the outline of this plan is established in DTE Electric's responses to ABATE's discovery requests. See, Exhibits AB-1 to AB-9. Accordingly, ABATE asks that the Commission require the EL15 refunds to be flowed back to customers faster and with better transparency and verification of their accuracy in accordance with ABATE's proposal described in its exceptions and initial brief.

DTE Electric responds to ABATE's exception by stating that the basis for the ALJ's recommendation, i.e., the idea that faster refunds will make it less likely that different customers will be receiving the refunds than the customers that received utility service during the relevant period covered by those refunds, is not a valid reason for this recommendation because, with the

EL14 refund, three years had passed between the time the period of service for which the refunds accrued and FERC's final order in that docket. According to DTE Electric, the lengthy adjudication process at FERC renders timely repayment of the refund and achievement of the goal of including of the correct batch of DTE Electric customers an impossibility and makes the issue moot. Accordingly, the utility urges the Commission to reject the ALJ's and ABATE's recommendation on this issue.

Having considered the parties' arguments, record, and the ALJ's recommendation in the PFD on this issue, the Commission finds that the PFD is well-reasoned and adopts the ALJ's recommendation as well as ABATE's clarification of its proposal on this issue. The Commission agrees with ABATE that its discovery responses found in Exhibits AB-7, AB-8, and AB-9 provide evidentiary support for the ALJ's recommendation on this issue. These discovery responses show that DTE Electric intends to flow any refund payments back to retail customers using the same process DTE Electric used for the EL14 refunds, intends to disclose to its retail customers the amounts of the EL15 refunds using the same process as used for the EL14 refunds, and intends to demonstrate to its retail customers and the Commission that the full amounts of the EL15 refunds have flowed back to its retail customers using the same process the company used with the EL14 refunds.

Regarding DTE Electric's argument that the issue is not yet ripe for review, the Commission agrees with ABATE that it is beyond dispute that a final FERC order will be issued on the EL15 refunds in the future and that it does not appear to be disputed that FERC will reach the same decision it did regarding the very same issue pertaining to the EL14 refunds. Therefore, the Commission concludes that the issue does not "rest upon contingent future events that may not occur as anticipated or, indeed, may not occur at all." *City of Huntington Woods v City of Detroit*,

279 Mich App 603, 615-616; 761 NW2d 127 (2008) (citation omitted). Further, even if a reviewing Court were to determine the timeliness of the EL15 refund to be an issue not yet ripe for review under the doctrine of ripeness, the Commission is not precluded from providing general direction to DTE Electric regarding the time for repayment of future FERC-ordered MISO/ITC refunds if and when they are refunded to the utility. Such general guidance is very much akin to declaratory relief. And, Courts have held that:

An actual controversy is deemed to exist in circumstances where declaratory relief is necessary in order guide or direct future conduct. In such situations, courts are not precluded from reaching issues before actual injuries or losses have occurred.

City of Huntington Woods, supra, at 616, *quoting Detroit v Michigan*, 262 Mich App 542, 551; 686 NW2d 514 (2004).

With respect to DTE Electric's claim that the ALJ's ruling was speculative because it is unclear whether DTE Electric will be in an under-recovered or over-recovered PSCR position at the time of the refund, the Commission notes that ABATE's requested relief is limited to those circumstances where DTE Electric is projected to be in an over-recovered PSCR position through the end of the PSCR factor period. See, ABATE's exceptions, p. 2, quoting ABATE's initial brief, pp. 3-4. Accordingly, the Commission disagrees that the ALJ's ruling was speculative.

Finally, regarding DTE Electric's argument that the issue is moot because the lag time between the period of service covered by the refunds and a final FERC order makes timely repayment impossible, the Commission disagrees. There is no way of knowing in advance when or whether a utility customer will terminate their service with a utility. However, it is still true that the timelier the repayment of a customer refund is, the less likely it is that the wrong group of customers will receive that refund. To suggest that the only way the right group of customers will be repaid is if the utility refunds the MISO/ITC money before three years have passed is specious

and speculative. Although the Commission has no control over the lag time at FERC, the cost of service principles espoused by the Commission require utilities to do their best to timely repay their customers any refunds owed. Here, the Commission has determined that DTE Electric can do more to improve its refund process.

Therefore, DTE Electric is directed, in any future PSCR plan case where a FERC ordered refund is likely forthcoming within the 12-month plan period, to include information in its application to the Commission indicating how the utility plans to make a timely refund.

NEXUS Pipeline

Finally, MEC/SC asks that the Commission ensure an accurate recitation of the record regarding the NEXUS pipeline. Although the ALJ referenced costs related to the proposed NEXUS pipeline “arising from both the construction and operation of the facility,” MEC/SC explains that, in this PSCR plan case, DTE Electric sought Commission approval of gas transport service expenses anticipated to be incurred under its affiliate contract for firm natural gas transportation on the NEXUS pipeline, but not pipeline construction costs. MEC/SC’s exceptions, p. 2, citing DTE Electric’s September 30, 2016 application, p. 8. Next, MEC/SC clarifies that, contrary to what is asserted on page 32 of the PFD, the Commission’s January 12, 2017 order in Case No. U-17920 did not anticipate a future evidentiary presentation of NEXUS construction costs, which MEC/SC argues would be beyond the scope of a PSCR proceeding. MEC/SC also clarifies the evidence of the claimed savings resulting from the NEXUS pipeline. Despite what was indicated on pages 22 and 23 of the PFD, MEC/SC asserts that the claimed savings amounts recited by Mr. Sloan and repeated in the PFD result from the pipeline’s construction and thus accrue to all natural gas customers in Michigan irrespective of whether DTE Electric, via a NEXUS gas transport contract, holds capacity on the NEXUS pipeline. MEC/SC further posits

that Mr. Sloan's claimed NPV of the estimated savings to DTE Electric customers resulting from holding NEXUS capacity in the amount of \$22 million is an outdated amount that is speculative and unreliable. MEC/SC assert that Mr. Wilson demonstrated that updated data shows the pipeline would actually represent a net cost to ratepayers during the contract period. Thus, MEC/SC argue that the final order in this case "should not inflate what is already an exaggerated claim regarding the purported savings to ratepayers as a result of the NEXUS deal." MEC/SC's exceptions, p. 5. The Commission has reviewed MEC/SC's request to clarify the record in this case and agrees with MEC/SC's observations that the projected costs at issue are gas transport expenses and not costs for constructing and operating the NEXUS pipeline as alluded to in the PFD. The Commission also agrees with MEC/SC that future evidentiary presentation of construction costs would be beyond the scope of a PSCR proceeding. Regarding the clarification that MEC/SC seeks about the correct type of customer who will receive the claimed savings that will result from the NEXUS pipeline, the Commission notes that MEC/SC does not point to any evidentiary support for its assertion. The Commission further finds this issue to be moot in light of the ALJ's conclusion that consideration of the NEXUS pipeline is not yet ripe for review given that it will not be in operation during the 2017 PSCR plan year.

THEREFORE, IT IS ORDERED that:

A. DTE Electric Company's application for a power supply cost recovery plan for 2017 metered jurisdictional electric sales is approved as set forth in the order excluding any NEXUS-related costs.

B. DTE Electric Company's five-year forecast is accepted as set forth in the order.

C. DTE Electric Company is authorized to implement an adjusted 2017 maximum monthly power supply cost recovery factor of 0.79 mills per kilowatt-hour.

D. DTE Electric Company shall file, in any future power supply cost recovery plan case where a Federal Energy Regulatory Commission ordered refund is likely forthcoming within the 12-month plan period, information in its application to the Commission indicating how the DTE Electric Company plans to make a timely refund.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any person desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of December 20, 2017.

Kavita Kale, Executive Secretary